

Before the
Administrative Hearing Commission
State of Missouri



LESTER ARENS,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1708 RV
)	
DIRECTOR OF REVENUE,)	
)	
Respondent.)	

DECISION

Lester Arens is not entitled to a refund of fees paid for tabs renewing his motor vehicle license plates.

Procedure

On September 30, 2013, Arens filed a complaint seeking a refund of fees paid for tabs renewing his license plates for a 2011 Honda. The Director of Revenue (“Director”) filed an answer and motion for decision on the pleadings on October 16, 2013. We gave Arens until October 31 to respond to the motion. On October 28, Arens filed a document that may have been a response to the Director’s motion, but we deemed it an amendment to his complaint; as such, we grant him leave to file it.

Regulation 1 CSR 15-3.446(4) provides:

A decision on the pleadings is a decision without hearing based solely on the complaint and the answer. The commission may grant a motion for decision on the pleadings if a party’s pleading, taken as true, entitles another party to a favorable decision.

Facts Taken as True for Purposes of Ruling on the Motion

Based upon the amended complaint, which we take as true for purposes of ruling on the motion for decision on the pleadings, we find the following facts:

1. At some time before October 24, 2013, Arens paid for a one-year registration of a 2011 Honda passenger vehicle.
2. On August 23, 2013, Arens purchased a 2013 Honda passenger vehicle and paid for a two-year registration for it. He paid for the vehicle in full on October 16, 2013.
3. Arens sought a refund from the Director of the one-year registration he had previously paid.
4. By letter dated September 20, 2013, the Director issued a final decision denying Arens' request for a refund, noting there was no erroneous overpayment of fees by Arens.

This Commission has jurisdiction over appeals from the Director's final decisions.¹ Arens has the burden to prove he is entitled to a refund.² Our duty is not merely to review the Director's decision, but to independently apply existing law to the facts and render the ultimate administrative decision.³

Arens alleges he was told he could get a refund of the one-year registration fee paid for the 2011 Honda that was unused when he registered his 2013 Honda for two years.⁴ Although it was not clear from his pleadings, we assume Arens wished to transfer the plates from his 2011 Honda to the 2013 Honda, and sought a refund on the unused portion of the 2011 tabs. The

¹Section 621.050, RSMo 2000. Statutory references are to the 2012 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted.

²*Id.*

³*J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990).

⁴ We attempted to liberally construe Arens' *pro se* pleadings, but admit we may not have fully understood his allegations. Regardless of whether Arens sought to transfer the plates from the 2011 Honda, to surrender those plates, or sought a refund of the unused portion of the 2013 registration, our analysis and decision would be the same.

Director argues that no provision of law authorizes him to issue a refund under these circumstances.⁵ The Director is correct.

A refund is a limited waiver of sovereign immunity and is not allowed unless expressly permitted by statute.⁶ “When a state consents to be sued, it may be proceeded against only in the manner and to the extent provided by the statute; and the state may prescribe the procedure to be followed and such other terms and conditions as it sees fit.”⁷ Subsections 3 and 8 of § 301.140 authorize transfer of license plates and surrender of license plates under certain circumstances. Both of these subsections explicitly state that no refunds will be given.

Our research discloses only one statutory provision allowing a refund for license plate fees. Section 301.121, which applies to commercial vehicles registered in excess of fifty-four thousand pounds, provides for a refund of certain amounts paid when a license plate is surrendered. Because Arens’ Honda is not a commercial vehicle, the refund provision of § 301.121 is inapplicable.

We find no provision of law allowing a refund to Arens. The Director cannot change the law, nor can this Commission.⁸ We have no authority to allow a refund under these circumstances.

⁵ The Director cites no law in his motion to advance his position that no refund may issue for the unused portion of license plates and tabs. Instead, he states only “Respondent knows of no provision of law granting Respondent authority to refund the unused portion of any license plates and/or tabs.” We have granted similar motions in the past, *see, e.g., Foley, et al. v. Director of Revenue*, No. 13-1641 RV (Oct. 25, 2013), *Dean v. Director of Revenue*, No. 12-1841 RV (Dec. 10, 2012), but a party’s motion on the pleadings should *demonstrate* that the other party’s “pleading, taken as true, entitles [it] to a favorable decision.” 1 CSR 15-3.440(4). Such demonstration should include citation to relevant laws and appropriate legal argument. The Director is in the best position to cite such laws as well as to keep abreast of any changes in the relevant law.

⁶*Community Fed. Sav. & Loan Ass’n v. Director of Revenue*, 796 S.W.2d 883, 885 (Mo. banc 1990).

⁷*State ex rel. Brady Motorfrate, Inc. v. State Tax Comm’n*, 517 S.W.2d 133, 137 (Mo. 1974).

⁸*Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985).

Summary

Arens is not entitled to a refund of vehicle registration fees. We grant the Director's motion for a decision on the pleadings and cancel the hearing.

SO ORDERED on November 18, 2013.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner